

APPEAL NO. 021426  
FILED JULY 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 30, 2002. The hearing officer resolved the disputed issues by concluding that the respondent's (claimant) compensable injury of \_\_\_\_\_, extends to and includes an injury to her cervical spine and that the claimant's correct impairment rating (IR) is 23% as assigned by the designated doctor. The appellant (carrier) appeals, arguing that the medical evidence does not support the hearing officer's determinations. The claimant responded, requesting affirmance.

DECISION

Affirmed.

**EXTENT OF INJURY**

The claimant testified she was injured while lifting a "patient" in the course and scope of her employment. The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, which includes the lumbar and lumbosacral regions of her spine. The claimant had the burden to prove by a preponderance of the evidence that her compensable injury of \_\_\_\_\_, extends to and includes an injury to the cervical spine. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Extent of injury is generally a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility of the evidence and determines what facts have been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). There was conflicting evidence on the issue of extent of injury. The hearing officer was persuaded that the evidence was sufficient to establish that the compensable injury of \_\_\_\_\_, extends to and includes the claimant's cervical spine. The challenged determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

**IMPAIRMENT RATING**

As to the second basis of the carrier's appeal, the IR report of the designated doctor chosen by the Texas Workers' Compensation Commission (Commission) has presumptive weight and the Commission shall base its determination of IR on that report unless the great weight of the medical evidence is to the contrary. Section 408.125(e). The hearing officer considered the medical evidence and decided that the

great weight of the medical evidence was not contrary to the opinion of the designated doctor that the claimant's IR was 23%. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The carrier argues that the designated doctor improperly included a rating for specific disorders for the cervical injury because the cervical injury had resolved. The hearing officer specifically noted that this argument was contradicted by diagnostic reports and testimony. The hearing officer reviewed the record and resolved what facts were established. We conclude that the hearing officer's determinations are sufficiently supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **THE CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge